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Declaration of Gregory M. Fox
EXHIBIT D (21 pages from Kepo'o Depo)

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

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COPY

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5 SRI LOUISE COLES, et al.,)
6 Plaintiffs,)
7 -vs-) No. CO3-2961 TEH (JL)
8 CITY OF OAKLAND, a Municipal) CO3-2962 TEH (JL)
entity, et al.,)
9 Defendants.)
10 _____)

11 and related cross-action.

12

13

14 DEPOSITION OF BILLY KEPO'O

15 Tuesday, April 12, 2005

16

17

18

19 REPORTED BY: BRIAN DEZZANI, CSR #4572

20

21

22

23 LUSK & SNYDER
24 COURT REPORTERS
760 MARKET STREET, SUITE 326
SAN FRANCISCO, 94102
25 (415) 362-5991

1 coworkers prior to actually arriving at the port on the
2 7th about some protest other than what this guy had told
3 you the night before?

4 A. No.

5 Q. All right. When you drove to work that
6 morning, were you by yourself?

7 A. Yes.

8 Q. You generally drove yourself to work?

9 A. Yes.

10 Q. How would you be dressed -- let me ask you
11 specifically how were you dressed on that Monday? What
12 were you wearing?

13 A. Jeans, shirt.

14 Q. Shirt would be a t-shirt?

15 A. Yes.

16 Q. Was that your normal dress for work?

17 A. Yes.

18 Q. Once you were inside the gate, would you
19 change into other clothing?

20 A. No.

21 Q. Put on any special vests, jackets or
22 identifying gear that you were a worker or longshoreman?

23 A. Hard hat and vest, yes.

24 Q. Did the hard hat have any writing on it, logos
25 or is that something you could individually customize?

1 because he couldn't go any further. That's different.

2 MR. FOX: Q. Okay. When you pulled over, this
3 is something you did voluntarily on your own?

4 A. Yes.

5 Q. After you -- you turned your engine off?

6 A. Yes.

7 Q. What did you decide to do?

8 A. Walk the rest of the way to SSA.

9 Q. Did you exit your car?

10 A. Yes.

11 Q. Were you carrying your helmet and your vest?

12 A. Yes.

13 Q. Lunch box?

14 A. No.

15 MR. BURRIS: Pardon me?

16 THE WITNESS: No.

17 MR. FOX: Q. Anything else you were carrying?

18 A. No.

19 Q. Were you wearing a jacket?

20 A. I was wearing a sweater.

21 Q. A sweater. Did the sweater say anything?

22 A. No.

23 Q. Did the sweater have sleeves?

24 A. Yes.

25 Q. V-necked?

1 A. It was Old Navy fleece.

2 Q. Okay. Did it say Old Navy on it?

3 A. No.

4 Q. Say anything on it?

5 A. No.

6 Q. So you were wearing your shirt, your sweater,
7 your jeans, you're carrying a helmet and your green
8 vest?

9 A. Yes.

10 Q. And then what did you decide to do?

11 A. Then I decided to walk to the SSA, so I
12 originally went in towards the terminal, APL terminal.

13 Q. Right.

14 A. But then a police officer told me I couldn't
15 go that route. He told me I had to go the other way
16 which is the railroad tracks side, so I did that. I
17 walked around -- around both lines, the protestors, and
18 then went back and then proceeded to walk all the way to
19 SSA's west gate.

20 Q. East gate?

21 A. East gate.

22 Q. Okay. So as you proceeded westbound walking
23 on the same side of the road as the railroad tracks,
24 once you attempted at one point to pass over to the
25 frontage road or the road that would be right in front

DEPOSITION OF BILLY KEPO'O, 4-12-05

1 A. No.

2 Q. Didn't see the police trying to push people
3 with their batons?

4 A. When I walked around them?

5 Q. Right.

6 A. No.

7 Q. What was your sense as to what was taking
8 place at that west APL gate as you walked by?

9 A. What do you mean by that?

10 Q. Well, when you came to work everyday, you
11 rarely saw two police lines, a group of people walking
12 in a circle; right?

13 A. Right.

14 Q. So what was your sense as to what was taking
15 place?

16 A. Wow.

17 Q. All right. And did you see any longshoremen
18 standing along Middle Harbor trying to get into the west
19 APL gate?

20 A. I seen longshoremen standing over on this
21 side, (indicating).

22 Q. On the side of the railroad tracks?

23 A. There were mechanics, some mechanics were
24 standing on this side.

25 Q. Which would be the same side you parked your

DEPOSITION OF BILLY KEPO'O, 4-1-05

1 car?

2 A. Yeah.

3 Q. As you walked by them, did you say hello or
4 communicate?

5 A. Yeah.

6 Q. What was --

7 A. Just hello.

8 Q. Did you ask them if they were having problems
9 getting to work?

10 A. No.

11 Q. You said "Hi" and they said "Hey" and you kept
12 going?

13 A. Yes.

14 Q. Did the mechanics appear to be part of the
15 protest?

16 A. No.

17 Q. Did they talk about showing solidarity with
18 the protesters?

19 A. No.

20 Q. Was there any type of a picket line, honoring
21 a picket line?

22 A. No.

23 Q. Waiting for an arbitrator?

24 A. No. When I was walking around them --

25 Q. As you walked by, did you see Jack Heyman?

1 A. No.

2 Q. Would you recognize Jack Heyman if you saw
3 him?

4 A. Yes.

5 Q. Did you see any union officials communicating
6 with the police?

7 A. No.

8 Q. So you figured "I'm still going to work and I
9 better get going"?

10 A. Yes.

11 Q. Were you feeling any concern about leaving
12 your car parked back where it was?

13 A. No.

14 Q. Did you assume it was lawfully parked and you
15 could return there at 6:00 o'clock and pick it up?

16 A. I never really thought about it.

17 Q. Okay. Fair answer.

18 As you headed down across Middle Harbor
19 approaching the east SSA gate, what did you see taking
20 place in the area of the east SSA gate that was out of
21 the ordinary?
22

22 A. You had protesters in a circle here,
23 (indicating).

24 Q. Okay. So they were on -- kind of on the
25 driveway in front of the east SSA gate?

1 A. Yes.

2 Q. Did the circle extend out onto Middle Harbor?

3 A. No. Just from side to side.

4 Q. Okay. And they were marching in a big circle?

5 A. Yes.

6 Q. Was there any truck traffic moving through the
7 gate?

8 A. No.

9 Q. Any vehicle traffic?

10 A. No.

11 Q. Did you see any longshoremen standing around?

12 A. In the middle of the road.

13 Q. When you say that they were standing in the
14 middle of the road, was there a pedestrian island there?

15 A. No.

16 Q. Was it a lane of traffic or a turn lane?

17 A. There's a double line, that created one of
18 those -- like it wasn't a cement island, but it was a
19 painted island.

20 Q. Okay. Just really briefly kind of just draw
21 -- draw me Middle Harbor and show me what it looked like
22 as you were standing?

23 A. That's a turning lane.

24 Q. Okay.

25 A. And the protesters were here, (indicating).

1 The longshoremen basically parked their cars here and
2 were basically standing in this area. So to me the
3 Middle Harbor lane always it would be going eastbound.
4 It would be eastbound this way and east bound this way,
5 (indicating).

6 Q. All right. Is there a railroad crossing right
7 about there?

8 A. Not there.

9 Q. There is a railroad crossing somewhere in this
10 vicinity of the SSA gates?

11 A. The railroad comes across the road.

12 Q. Right.

13 A. A little further down.

14 Q. Okay. Does that railroad crossing or other
15 gate entrance --

16 A. I wouldn't know.

17 Q. Okay. Does that railroad actually operate,
18 trains actually cross the road there?

19 A. I haven't seen any.

20 Q. So this would be an island for cars that were
21 going to make a turn where?

22 A. U-turn.

23 Q. Oh, okay. So something surrounded by a double
24 yellow line?

25 A. Right.

1 Q. Were there any cars in this island area?

2 A. Longshoremen's.

3 Q. Okay. So as you approached those
4 longshoremen, did you recognize them?

5 A. Yes.

6 Q. And what information was exchanged between you
7 and them regarding what's going to happen about going to
8 work today?

9 A. Business agent was called.

10 Q. Which would be Jack Heyman?

11 A. Jack Heyman.

12 Q. Somebody had a cell phone?

13 A. Yes. I presume so, yes.

14 Q. Who made the call?

15 A. I don't know.

16 Q. Did you hear the conversation?

17 A. No.

18 Q. What were you told about the conversation?

19 A. The business agent was called, and for us
20 stand by.

21 Q. Did you attempt to walk through the east SSA
22 gate?

23 A. No.

24 Q. Why not?

25 A. I don't know. I didn't want to get beat up.

1 A. It depends on if there's three cranes. Two
2 cranes required, but I didn't know how many cranes was
3 being operated.

4 Q. What's the fewest number it could be?

5 A. One crane.

6 Q. Which would be how many crew?

7 A. It would be a walking boss, dock boss, two
8 crane drivers, hatch tender, seven tractor drivers, four
9 lashers.

10 Q. Almost 20 people?

11 A. Plus your two top pickers, your clerks.

12 Q. So it could be 25 people?

13 A. For one crane?

14 Q. Sure. 15 to 25 people?

15 A. Sure.

16 Q. Two cranes double the number?

17 A. Yes.

18 Q. Three cranes triple the number?

19 A. Yes.

20 Q. Was there any discussion among the
21 longshoremen about going up to the other gate, the west
22 SSA gate?

23 A. No.

24 Q. So the consensus was we're just going to stand
25 by?

1 A. Yes.

2 Q. How long did you stand by for some something
3 to happen to change the scenario?

4 A. Yeah, something happened to change the
5 scenario.

6 Q. About how long?

7 A. About 30 minutes, 40 minutes. It was about
8 after 8:00 o'clock when things started changing.

9 Q. Okay. So for 30 to 40 minutes you just
10 basically stood there in the middle of Middle Harbor
11 with your fellow workers watching the protesters march
12 in a circle?

13 A. Yes.

14 Q. Could you hear anything going on down at the
15 other west API gate?

16 A. Yes.

17 Q. What could you hear going on between 7:30 and
18 8:00, if anything?

19 A. Explosions.

20 Q. Explosions?

21 Did you see a helicopter at any point flying
22 overhead?

23 A. No.

24 Q. When you heard the explosions that was
25 approximately what time, if you can recall? You got

1 there at about 7:20, 7:25?

2 A. Right.

3 Q. What time did the explosions start taking
4 place?

5 A. Oh, I'd say about -- I don't know, maybe about
6 quarter to 8:00.

7 Q. Okay. When you heard the explosions, what, if
8 anything, did you learn about what was going on?

9 MR. BURRIS: At that moment?

10 MR. FOX: Yeah. Boom, boom, boom, bang, bang,
11 bang.

12 THE WITNESS: Something was going on.

13 MR. FOX: Q. Something is going on. Was there
14 any discussion to call anyone, call the business agent?

15 A. I wouldn't know.

16 Q. So when you heard the explosions, you had no
17 idea what was going on?

18 A. No.

19 Q. What then happened in terms of a change in the
20 dynamics? You heard these explosions, then what starts
21 to happen?

22 A. Then people start running our way.

23 Q. So people are moving westbound on Middle
24 Harbor?

25 A. Uh-huh.

1 Q. Away from the west APL gate? Are they
2 running?

3 A. They were running.

4 Q. And were they civilians or police?

5 A. They were the protesters.

6 Q. The protesters were running. Where were they
7 running to?

8 A. It looked like they were running our way.

9 Q. So they were running generally westbound on
10 Middle Harbor, and were they approaching the island
11 where you were standing?

12 A. Yes.

13 Q. Okay. And you saw about how many people
14 running towards you, five, 50, hundreds?

15 A. A group of a lot.

16 Q. Large crowd of people?

17 A. A large crowd of people.

18 Q. As that crowd ran towards you, what, if
19 anything, did the protesters do who were marching in
20 that circle in front of the east SSA gate?

21 A. I didn't see any change. They were still in
22 the circle.

23 Q. Was there any discussion between you and your
24 coworkers about moving, changing your location, doing
25 anything in response to hearing these explosions and

1 seeing this crowd of people now running towards you,
2 westbound on Middle Harbor?

3 A. No.

4 Q. Did you have any idea as to why they were
5 running westbound?

6 A. Not really.

7 Q. Did you put your helmet on?

8 A. No.

9 Q. Put your vest on?

10 A. No.

11 Q. Did -- was anybody else wearing an SSA helmet?

12 A. I can't recall..

13 Q. Anybody else put their vests on?

14 A. Don't remember..

15 Q. Anybody wearing distinctive union jackets?

16 A. I don't know.

17 Q. Anybody wearing, like, badges or signs around
18 their necks saying Local 10 or anything like that?

19 A. No, I don't.

20 Q. Okay. Did the people running towards you
21 actually come up within physical proximity to you?

22 A. Our area became crowded.

23 MR. BURRIS: When you get to a breaking point

24 --

25 MR. FOX: Let's take a quick break.

1 MR. FOX: Maybe blue. It may be green.

2 MR. BURRIS: Dark blue.

3 MR. FOX: And then the overhead video is in
4 black and white. And after watching it several times
5 you were able to identify an individual who you believe
6 was yourself which, in general, appear to be standing in
7 front of this vehicle as the police motorcycle line
8 approached and came to a stop. And then as the police
9 tango team appeared and threw objects which appeared to
10 explode and began to discharge firearms, the figure on
11 the video appears to react to that.

12 So I'm going to walk you through, and I want
13 you to kind of go back now and use your own memory. We
14 reached it somewhat with the videotape, but you
15 yourself, of course, were there and you have some
16 perceptions as to what happened.

17 So as you are standing on Middle Harbor with
18 your coworkers in close proximity to you, the
19 demonstrators run westbound and, in fact, reach the area
20 where you yourself are standing; correct?

21 A. Yes.

22 Q. And it would appear this was a fairly
23 significant number of demonstrators?

24 A. Yes.

25 Q. At least 100, if not more people?

1 A. I don't know the numbers, but it got crowded.

2 Q. It got crowded.

3 Now, was there a period of time in which the
4 police line came to a stop so there was an open space
5 between the area of Middle Harbor occupied by the police
6 and the area of Middle Harbor occupied by yourself,
7 other longshoremen and the demonstrators?

8 A. Yes.

9 Q. And what occurred while the two lines in
10 affect were stopped while the police line was stopped
11 and while the demonstrators were congregating in your
12 area, what took place during that time period?

13 A. They were all basically milling -- going this
14 way, (indicating). They were walking away from the
15 police line.

16 Q. Westbound?

17 A. Westbound.

18 Q. Okay. And then as the demonstrators were
19 walking westbound, at any point in time did you hear any
20 kind of a command from the police regarding dispersal or
21 unlawfulness?

22 A. Very faint.

23 Q. Okay. But you did hear some type of demand
24 from the police?

25 A. Yes.

1 Q. Did that occur while the police line was still
2 at this stop point where there was distance between them
3 and the demonstrators and yourself?

4 A. Yes.

5 Q. When you heard that demand by the police, can
6 you tell me specifically what it was you heard? A word
7 or words or whatever you heard will be helpful for me.

8 A. Violation and to disperse.

9 Q. Okay. After this dispersal command was given
10 by the police, did some period of time -- did some
11 period of time go by before the police motorcycles
12 accelerated and moved closer to you?

13 A. After the dispersal, the order, I heard a
14 bang and then I got hit, and then the motorcycle started
15 moving forward.

16 Q. Okay. Now, we saw on the videotape -- maybe I
17 should play it one more time.

18 (Plays videotape.)

19 MR. FOX: Q. Okay. At the very beginning of
20 the videotape you see the police motorcycles beginning
21 to approach the crowd standing near the east SSA gate;
22 correct?

23 A. Right.

24 Q. Was the dispersal order given before those
25 motorcycles began to come closer to you or after?

1 A. Before.

2 Q. Before? Did you hear the shot before the
3 motorcycles began to approach you or did it occur at
4 some point afterwards?

5 A. Before.

6 Q. Before. Did you hear a single shot or several
7 shots?

8 A. To me it was a single bang.

9 Q. A single bang?

10 A. Yeah.

11 Q. And then when you heard that bang, did you
12 feel anything?

13 A. Yes.

14 Q. And did you look down and see if you'd been
15 injured?

16 A. Yes.

17 Q. And first, where did you feel something?

18 A. My right hand.

19 Q. Now, I want you to go back. And you're
20 standing on Middle Harbor and when you hear the police
21 dispersal order, are you facing eastbound looking at the
22 police line?

23 A. I think I was looking at, like, protesters.

24 Q. People that are standing around you?

25 A. Right.

1 Q. So were you -- so you're not looking directly
2 at the police?

3 A. No.

4 Q. And when you heard the dispersal order, did
5 you think that that applied to you?

6 A. No.

7 Q. Did you see people beginning to then walk
8 westbound?

9 A. Yes.

10 Q. Did you think that that -- that the dispersal
11 order required you to walk westbound?

12 A. I didn't think that applied to me at all.

13 Q. And the reason being?

14 A. Because I was going to work.

15 Q. Okay. When you heard the bang, which way were
16 you facing?

17 A. Towards the protesters.

18 Q. Okay. So that would have been looking
19 eastbound, looking towards the SSA gate looking
20 westbound?

21 A. Towards the SSA gate.

22 Q. All right. And how soon after you heard the
23 bang, did you feel something strike you?

24 A. Like in a second later.

25 Q. Okay. I'm going to show you the tape one more

1 CERTIFICATE OF DEPOSITION OFFICER

2 I, BRIAN DEZZANI, CSR NO. 4572, duly
3 authorized to administer oaths pursuant to Section 2093
4 (b) of the California Code of Civil Procedure, hereby
5 certify that the witness in the foregoing deposition was
6 by me duly sworn to testify the truth, the whole truth
7 and nothing but the truth in the within-entitled cause;
8 that said deposition was taken at the time and place
9 therein stated; that the testimony of the said witness
10 was reported by me and thereafter transcribed by me or
11 under my direction into typewriting; that the foregoing
12 is a full, complete and true record of said testimony;
13 and that the witness was given an opportunity to read
14 and correct said deposition and to subscribe the same.

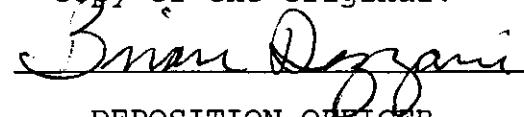
15 I further certify that I am not of counsel or
16 attorney for any of the parties in the foregoing
17 deposition and caption named, or in any way interested
18 in the outcome of the cause named in said caption.

19

20 DEPOSITION OFFICER

21 I hereby certify this copy
22 is a true and exact
23 copy of the original.

24 DATE: 5-8-05


25 DEPOSITION OFFICER